

UNITED STATES OF AMERICA  
DISTRICT OF MAINE

THE COTE CORPORATION,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 99-169-P
	)	
THOM'S TRANSPORT	)	
COMPANY, INC.,	)	
	)	
Defendant	)	

**MEMORANDUM OF DECISION**<sup>1</sup>

This matter is before the Court on the Plaintiff's Request for Issuance of Execution or, in the Alternative Motion For Order to Show Cause. On February 28, 2000, Plaintiff was awarded a judgment in the amount of \$127,621.77. Defendant filed an appeal of that matter, and on July 14, 2000, some five months after the entry of judgment, the Plaintiff filed a motion contesting Defendant's stay upon appeal because Defendant has never given a supersedeas bond pursuant to Rule 62(d) of the Federal Rules of Civil Procedure. Plaintiff requests that an immediate execution issue on the judgment, or in the alternative, that Defendant post a supersedeas bond in the amount of the judgment.

Defendant, on the other hand, argues that pursuant to Rule 62(f) of the Federal Rules of Civil Procedure it is entitled to a stay without the necessity of furnishing a bond. That rule provides that in any state where the judgment debtor is entitled to a stay of execution *and* where the judgment is itself a lien upon the property of the judgment debtor, the debtor is accorded the stay which would be available in state court. Neither

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

party disputes that pursuant to Rule 62(e) of the Maine Rules of Civil Procedure Defendant, as the judgment debtor, would be entitled to a stay in state court.

The dispute in this case centers upon whether Maine treats the judgment as a lien upon the property of the judgment debtor. Plaintiff argues that the judgment is not a lien because an execution must issue and be recorded in order to obtain a lien on the property of the debtor pursuant to 14 M.R.S.A. § 4651-A. However, Defendant notes that prior to issuance of a writ of execution the judgment debtor need only file an attested copy of the judgment in the registry of deeds or the proper place pursuant to the U.C.C., Title 11, section 9-401 in order to “attach” the property of the judgment debtor. The filing constitutes “perfection of the attachment.” *See* 14 M.R.S.A. § 4151.<sup>2</sup> Pursuant to 14 M.R.S.A. § 4651-A (6) once an execution is issued in state court it is filed in the same manner as the judgment was filed and the effective date of the lien on the property relates back to the date of perfection of the attachment. Pursuant to Section 4151 it is the “attested copy of the court order awarding judgment” which created the lien.

The cases interpreting Fed. R. Civ. P. 62(d) and (f) turn upon whether the attested copy of the judgment creates the original lien or whether some other document or process is required. In *Marandino v. D’Elia*, 151 F.R.D. 227, 228 (D.Conn. 1993), the Court noted that in Connecticut steps beyond mere ministerial acts must be taken to transform the judgment into a lien. The creditor must prepare a second document identified as a judgment lien certificate. In Illinois a certified copy of the judgment need only be filed in

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<sup>2</sup> Section 4151 specifically notes that the attachment is perfected “[n]otwithstanding section 4454” which requires the additional step of an attaching officer’s return being filed in order to create a lien on property. The elimination of the additional step and the relation back provision in Section 4651-A discussed herein operate together to create the functional equivalent of the judgment itself being a lien upon the property of the debtor, although the statute speaks in term of “attachment.” The procedures attendant to perfecting an attachment are not required.

the registry to create a lien. *Smith v. Village of Maywood*, No. 84 2269, 1991 WL 277629 (N.D. Ill., Dec. 20, 1991). The Federal Court in Connecticut required a bond, the Illinois Court did not. As Maine only requires an attested copy of the Court's order awarding judgment to create a lien, Plaintiff's Motion requesting the issuance of an execution or in the alternative the posting of a supersedeas bond is **DENIED**.

***SO ORDERED.***

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Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated: August 24, 2000

BANGOR

STNDRD

U.S. District Court  
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 99-CV-169

COTE CORPORATION v. THOMS TRANSPORT CO  
05/20/99

Filed:

Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK    ury demand: Defendant  
Demand: \$125,000    Nature of Suit: 380  
Lead Docket: None    Jurisdiction: Diversity  
Dkt# in other court: None

Cause: 28:1332 Diversity-Property Damage

COTE CORPORATION  
    plaintiff

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v.

THOMS TRANSPORT COMPANY INC  
    defendant

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